Supreme Court, U.S.
FILED
JAN 27 1992
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NO. 90-1086

IN THE SUPREME COURT OF
THE UNITED STATES OF AMERICA

October Term, 1991

STATE OF ALABAMA,

Petitioner,

v.

BRAD HAYWOOD SIMS,

Respondent.

ON PETITION FOR WRIT OF CERTIORARI
TO THE SUPREME COURT OF ALABAMA
AND ALABAMA COURT OF CRIMINAL APPEALS

APPENDIX TO RESPONDENT'S BRIEF IN OPPOSITION TO CERTIORARI

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APPENDIX A

Evidence at Second Trial

Montgomery Police Department officer Robert Lay related that Julius Moore was one of his partner's informants. (R. Vol. V, p. 256). According to Lay, "[h]e found him by he called up one day and offered his services, said that he knew a number of drug dealers and he wanted to help put them in jail." (R. Vol. V, p.256). Lay said that he had personally worked cases with Moore. (R. Vol. V, p.256). Moore had been convicted of assault in the first degree and given a three year suspended sentence. (R. Vol. VII, p.693). Moore had also been convicted of possession of a controlled substance and given a five year suspended sentence. (R. Vol. VII, p.693). Lay said that he had not gone to the

sentencing judge on Moore's behalf. (R. Vol. V, p.338). John Sanders, a State Probation and Parole Officer to whom Moore's case was assigned, testified that he had recommended probation in Moore's case. Sanders said that he had not been contacted by anyone with the Montgomery Police Department about Moore. (R. Vol. VII, pp. 786, 787). Moore had testified against others who were found not guilty. (R. Vol. VII, p.714).

Lay testified that he planned to use Julius Moore on September 29, 1989 in an investigation of James Ray Walker, a/k/a Miami. (R. Vol. V, p.257). Moore testified that he knew Miami as a drug dealer. (R. Vol VII, pp. 693-694). Lay said that Moore came to his office and said he had a deal already set up with Miami. Lay said Moore told him that he

had talked to Miami on the telephone earlier that day and arranged to buy an ounce of cocaine for $600.00. (R. Vol. V, p. 258).

Lay asked Lieutenant R.C. Martin to sign out $700.00. (R. Vol. V, p.260). Lt. Martin, at first denied Lay's request. (R. Vol. VI, p. 444). Lt. Martin told him in a joking manner that if it did not go through they would both be in a lot of trouble. (R. Vol. VI, p. 446). Lay got the money. (R. Vol. V, pp. 265, 267). Lay filled out a petty cash voucher for the $700.00. (R. Vol. V, pp. 260-261, State's Exhibit 8). Lay also filled out a document stating the amount of money paid for cocaine and the amount of money paid to Moore even though no money had been paid yet. (R. Vol. V, pp. 263-265, State's Exhibit 6). Lay said

that he usually did not fill out the expense vouchers until after the money was spent. (R. Vol. V, p. 265). He said that he filled this voucher out in advance because it was near the end of the fiscal year and it would be difficult for Lt. Martin to re-up the books later. (R. Vol. V, pp. 266, 269). Lay said that he took out $100.00 and recorded the serial numbers of $600.00. (R. Vol. V, p. 273). Lay said that he did not record the serial numbers on the other $100.00 because it was to go to Moore and he knew it would not be in the house. (R. Vol. V, p. 273). Lay said that he put the list in his evidence locker. (R. Vol. V, p. 273).

Lay said that the procedures for controlled drug buys had not changed since he had been with the Vice and

Narcotics Bureau.[1] But, Lay claimed that the procedures varied from case to case. (R. Vol. V, p. 389). According to Montgomery Police Department detective Bill Jameson, the procedures had not changed since 1984. (R. Vol. VII, p. 658). Jameson said that the procedure he and many others followed was to photocopy the money before the buy. (R. Vol. VII, p. 653). He said though that there were no written rules regarding photocopying buy money and that he had not known of an enforced policy on the matter. (R. Vol. VII, pp. 655, 665).

Moore was wired. (R. Vol. V, pp. 274, 275, R. Vol. VII, pp. 626, 694, State's Exhibit 19). Moore and his car were searched. (R. Vol. V, p. 259, R.

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[1] Lay said he started with the Vice and Narcotics Bureau in May of 1988. (R. Vol. V, p. 387).

Vol. VII, p. 695). No drugs or money were found in Moore's car. (R. Vol. V, p. 260). Lay gave Moore $600.00 as they went outside to leave on the deal. (R. Vol. V, pp. 260, 274, R. Vol. VII, p. 695).

Lay and Montgomery Police detective Bill Jameson followed Moore in a separate car in which they the wire surveillance equipment. Lay said that they followed Moore to the Cleveland Court area where Miami stayed. (R. Vol. V, p. 275). Lay said that Moore got out of his car to go into Cleveland Court but that Miami was not at home. (R. Vol. V, p. 275). Lay said that Moore spoke to another individual identified by Moore as "Big Man" and that Moore and "Big Man" got into Moore's car and headed south. (R. Vol. V, pp. 275-276). Lay said that he

did not see "Big Man" get into Moore's car. (R. Vol. V, p. 361).

Moore said that he could not find Miami, (R. Vol. VII, p.695), and that "Big Man," who was standing outside[2], told him he was going to take him over to Fairview Avenue where dope was found. (R. Vol. VII, p. 696).

Moore said that they then went there. (R. Vol. VII, p. 696). Moore testified that a young woman, whom he did not know, came out and said that they did not have any dope. (R. Vol. VII, p. 696). Lay said that he did not see Moore speaking to a female. (R. Vol. V, p. 360).

Moore said that the man then took him to Duncan Drive. (R. Vol. VII, p.

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[2] Moore said that Miami normally had someone outside to escort customers in to his apartment. (R. 724-725).

696).

Lay said that he and Jameson heard over the wire that Moore and "Big Man" were headed for Duncan Drive and followed them. (R. Vol. V, p. 276). According, to Jameson, Duncan Drive was infested with drugs. (R. Vol. VII, p. 672).

Once on Duncan Drive, a man Moore identified as "Chuckie" or Chubbie," later identified as Eric Johnson, got in the car with Moore and "Big Man" and directed them to Court Street. (R. Vol. VII. p. 697). Moore said that there were a lot of people standing around Johnson selling drugs. (R. Vol. VII, p. 756). Moore acknowledged that Johnson could have obtained drugs from any number of sources before he ever got to Perry Street. (R. Vol. VII, p. 756). Moore said that he did not know if there was

any cocaine in the car before they got to Mr. Sims' home. (R. Vol. VII, p. 727). Lay said that he did not see Moore on Duncan Drive. (R. Vol. V, pp. 360, 365).

According to Lay and Jameson, they lost contact with Moore for about five minutes (10:31-10:34 a.m.) and again from 10:41 a.m. - 11:05 a.m. (R. Vol. VII, pp. 633, 634, State's Exhibit 21). Lay testified that as they were leaving Duncan Drive, they had trouble hearing what was being said and did not know where they were going. (R. Vol. V, p. 277). Lay related that they went west but did not see them and then lost contact with the wire. (R. Vol. V, p. 277). Lay related that they then went back to Duncan Drive and waited. (R. Vol. V, p. 280). Jameson said during those times there were no voices coming

over the wire, but only static. (R. Vol. VII, p. 634). Jameson said that when contact was lost, he put the tape recorder on pause to save tape. (R. Vol. VII, pp. 634, 636).

Moore related that Johnson got out of the car and said that he was going to make a telephone call. (R. Vol. VII, p. 697). Moore testified that he did not see where Johnson went. (R. Vol. VII, p. 697). Moore said that Johnson came back out and directed him to Perry Street. (R. Vol. VII, p. 697). Moore said that "he said he had called this guy by the name of 'Big Man.'" (R. Vol. VII, p. 728). Moore said that he did not know what Johnson might have picked up when he went inside. (R. Vol. VII, p. 744). Moore acknowledged that there was drug dealing in his car before he ever got to

Perry Street. (R. Vol. VII, p. 743). He said that Eric Johnson had given "Big Man" marijuana and that Eric Johnson had smoked marijuana in the car. (R. Vol. VII, pp. 743, 744).

Moore said that he had told Johnson that he wanted one-half ounce but that Johnson said the guy did not have a half ounce but had only $400.00 worth of rocks and that he could double his money. (R. Vol. VII, p. 698). Moore said that they got to Perry Street around 10:00 a.m. (R. Vol. VII, p. 700). When they got to Perry Street, Moore gave Johnson $400.00 to get cocaine. (R. Vol. VII, p. 698). Moore said that Johnson got out and went into Sims' house. (R. Vol. VII, p.698). Moore said that when Johnson came out of Mr. Sims' home he gave him the cocaine. (R. Vol. VII, p. 728). Moore said that

he did not see any cocaine before Johnson got back into the car. (R. Vol. VII, p. 728). Moore said that he did not see anything inside of the house. (R. Vol. VII, p. 732). Moore said that Mr. Sims and Johnson both came back outside. (R. Vol. VII, p. 699). Moore claimed that Mr. Sims walked to the passenger side of the car and that "Big Man" rolled down the window. (R. Vol. VII, p. 699). According to Moore, Johnson was standing there talking to him. (R. Vol. VII, p. 699). He initially said that he could not hear what they were talking about. (R. Vol. VII, p. 699). But, he claimed that he heard Sims say that he would have four ounces of cocaine by twelve o'clock or later on that afternoon. (R. Vol. VII, p. 700). Moore said that he looked at the cocaine while Sims was in the

driveway. (R. Vol. VII, p. 735). Moore acknowledged that he had previously testified that he was given cocaine after he began driving away from Sims' home. (R. Vol. VII, pp. 737-738). Moore said that he did not see any exchange of drugs for money. (R. Vol. VII. p. 732).

Moore took Johnson back to Duncan Drive and "Big Man" back to Cleveland Court. (R. Vol. V, p. 280). Lay followed Moore from Duncan Drive back to his office. (R. Vol. V, p. 281). Lay said that he learned the address on South Perry Street when Moore told him over the wire on the way back to his office. (R. Vol. V, p. 396). Lay said that he had not searched the individual who got into Moore's car. (R. Vol. VI, p. 479).

Lay said that when he got back to headquarters, Moore, while still outside,

gave him crack and $200.00. (R. Vol. V, p. 281, R. Vol. VI, p. 418, R. Vol. VII, pp. 702, 703, State's Exhibit 12). Lay said that he searched Moore after he got back to headquarters and found no drugs or money. (R. Vol. V, p. 337, R. Vol. VIi, p. 707). Lay left Moore downstairs, went upstairs to talk to Lt. Martin, went back downstairs, and searched Moore's car. (R. Vol. VI, p. 409, R. Vol. VI, p. 707). Lay said that Moore's car was not searched immediately after they got back to headquarters. (R. Vol. VI, p. 408). Lay said that he photocopied the $360.00 and turned all of the money over to Bill Jameson. (R. Vol. V, pp. 282, 283, 316-318, 320, 321, State's Exhibit 4, State's Exhibit 11-A). Moore said that he walked with Jameson to Lieutenant Martin's office and that he did not see Jameson after he

went into Lieutenant Martin's office. (R. Vol. V, pp. 282-283). Lay said that he and Lt. Martin matched the serial numbers on the seized money against the serial numbers on his "cleaned up" list. (R. Vol. V, pp. 313-314). Lay said that $360.00 of the $932.00 -- three $100.00 bills and three $20.00 bills -- matched. (R. Vol. V, pp. 316, 322). Curiously, some of the serial numbers on Lay's "cleaned up" list were back-to-back numbers. (R. Vol. VI, pp. 533-545). Jameson testified that he took the $360.00 to the City Finance Department to be placed back into the general fund of the City of Montgomery, (R. Vol. VII, p. 641, State's Exhibit 17). Jameson testified that he photocopied the $572.00. (R. Vol. VII, p. 648).

Moore said that he gave Lay a

description of Eric Johnson. (R. Vol. VII, p. 708). Lay and Moore testified that Moore took Lay back to Sims' house. (R. Vol. VI, p. 413, R. Vol. VII, p. 703). Lay said they then returned to headquarters, and checked with Alabama Power Company to obtain the identity of the residents of 3437 South Perry Street. (R. Vol. VI, p. 413). Lay said that he was informed that the address was Sims' (R. Vol. V, p. 296). Lay said that when he came up with Sims' name he told Lt. Martin. (R. Vol. V, p. 296).[3] Moore picked Sims out of a photographic line-up. (R. Vol. V, pp. 326-330, State's Exhibit 15). Lay then gave Moore $100.00. (R. Vol. V, p. 337, R. Vol.

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[3] Lay said that he went to Lt. Martin rather than his immediate supervisor, Sergeant Tom Azar, because Sergeant Azar was not there. (R. Vol. V, p. 297).

VII, p. 709).

Lay said that he cleaned up the list of serial numbers. (R. R. Vol. V, pp. 281-282). Lay said that he rewrote the list to include only those bills which were missing from the $200.00 given to him by Moore. (R. Vol. V, pp. 281-282, State's Exhibit 9). Lay said that he then put the cleaned up list in his locker and gave the $200.00 to Lieutenant Martin. (R. Vol. V, pp. 281, 282). Lay said that he shredded and threw away the original list with the $600.00 listed on it. (R. Vol. VI, pp. 486, 570).

Municipal Judge Clark Campbell issued a search warrant which was executed later that afternoon. (R. Vol V, p. 307, State's Exhibit 2). Lay and a patrol supervisor to see if Sims was home. According to Lay, the supervisor

knocked on the door and no one answered. (R. Vol. V, pp. 307-308). Lay said that they waited around an hour before making entry into Sims' home. (R. Vol. V, p. 308). The search team found no drugs, no scales, no paraphernalia, no weights, no pipes, no bags, no drug residue, and no records. (R. Vol. V, p. 319, R. Vol. VI, pp. 496, 515, R. Vol. VII, p. 675). While the search was going on without success, they received instructions over the radio from Capt. Bodine, who was in a car with Montgomery Police Department Chief John Wilson, to pick up all Montgomery Police Department uniforms and property. (R. Vol. V, p. 312, R. Vol. V, p. 496). Search team member Ed McCurdy searched the bedroom. (R. R. Vol. V, p. 311). Five minutes before the search team left, McCurdy found money in the

back of the bedroom closet and handed it to Lay. (R. Vol. V, pp. 311, 312, R. Vol. VII, pp. 675-677). Sims was not at home when the money was supposedly found. (R. Vol. V, p. 319). Lay said that he counted the money -- $932.00. (R. Vol. V, p. 316).

Sims was searched. $202.00 was found on Mr. Sims' person. (R. Vol. V, p. 331).

After the search warrant was executed Sims was taken from his home to Vice and Narcotics Headquarters. (R. Vol. VIII, p. 814). Vice officer Tom Simon sat in an office with Mr. Sims. (R. Vol. VIII, p. 814). Simon said "Mr. Sims said to [him]...I knew this day was coming, as an exclamation. And I asked him, what do you mean? He said he'd been told by a narcotics officer that our

commander -- he called him Lieutenant Bodine -- suspected him of dealing drugs, and he felt that Captain Bodine was out to get him." (R. Vol. VIII, p. 817). Simon testified that Sims said he had done several things since he had learned that information from the unnamed narcotics officer that he felt brought about his arrest. (R. Vol. VIII, p. 821). According to Simon, Sims said that his job performance had gone down and that he would tell people he was a big drug dealer and say catch me if you can type things. (R. Vol. VIII, p. 821). Simon also said that Sims told him that he felt like he was under surveillance all of the time and that when he left his house on the way to work he would raise both hands flipping birds. (R. Vol. VIII, pp. 821-822). Simon related that

Sims said that he must be a pretty bad drug dealer since he was so badly in debt and related that his car had been repossessed, that he was behind on his rent, and that he was trying to save $2,000.00 for something. (R. Vol. VIII, p. 822). Simon also said that Sims told him that he saw two officers near his house and for that reason decided to go shopping instead of to his house. (R. Vol. VIII, pp. 823-834).

Robert Lay, being recalled by the State, was allowed to testify that the police department had information that made them suspicious of Sims as a possible drug dealer prior to September 29, 1989. (R. Vol. VIII, pp. 853-854).

Michael Jones and J. M. Wooten drove Sims from Vice and Narcotics headquarters back to his home. (R. Vol. VIII, p.

882). Jones said that when they first got into the car, Sims' asked them if they had been on the search of his home and that they replied no. Jones also said that Sims asked them if they had any part in the investigation of him and that they replied no. Jones also testified that Sims said that marked money had been found and that he did not doubt it because he regularly loaned money to people. Jones testified that Sims added that he had $500.00 to $600.00 loaned out and that a man had repaid him $70.00. (R. Vol. VIII, p. 884). Jones also testified that Sims asked them if his telephone were tapped and that they told him that they had no knowledge of it and that they knew nothing of the investigation. (R. Vol. VIII, p. 884). Jones said that Sims had told them that he thought his telephone

had been tapped for some time, that they were listening and that he had purposefully called several local drug dealers and pretended to talk about cocaine and set up deals. (R. Vol. VIII, p. 884). Jones said Sims also told them that he had talked about a lot of supervisors -- specifically lieutenants and captains -- to get at them because he thought they were listening. (R. Vol. VIII, p. 885). Jones also related that Sims told him that every day when he walked out to his patrol car he flipped a bird in case they were watching him. (R. Vol. VIII, p. 885). Jones said Sims told them that two patrol officers had told him that the Vice and Narcotics Bureau was investigating him and had him under constant surveillance. (R. Vol. VIII, p. 886). Jones also said that Sims told him

that a Vice and Narcotics detective had told him that he was being investigated for drug activity. (R. Vol. VIII, p. 886).

George Wyatt Gantt, a captain in the internal affairs bureau of the Montgomery Police Department gave evidence as to an October 2, 1989 conversation Sims had in the Internal Affairs Bureau of the Montgomery Police Department. Capt. Gantt testified that the $200.00 was recovered from Lieutenant Martin. (R. Vol. VIII, p. 914).

To conclude its case, the State of Alabama introduced Mr. Sims' testimony before the Montgomery County Grand Jury which indicted him. (R. Vol. VIII, p. 923).

The Circuit Court of Montgomery County overruled Appellant's motion for a

judgement of acquittal at the conclusion of the State's case in chief. (R. Vol. VIII, p. 933).

The defense case in chief was essentially as follows:

Montgomery Police Department Officer Willie McCord testified that about a month prior to the search of Sims' home, Sims had told him that he had information on high ranking officials in the Montgomery Police Department having engaged in illegal conduct. McCord related that Sims had told him that, according to an informant, Bodine was receiving money for protection. (R. Vol. VIII, p. 939). McCord testified that a week later he told Sims that he might be under surveillance by the Vice and Narcotics Bureau. (R. Vol. VIII, pp. 939, 947). McCord at first said that the

person who told him that Sims was being followed was black. (R. Vol. VIII, p. 950). However, he then said that the person was a white female. (R. Vol. VIII, p. 950). McCord said that he had made the first statement as to the identity of the person because he was trying to protect her. (R. Vol. VIII, p. 950). After this, McCord was advised of his rights out of the presence of the jury. (R. Vol. VIII, p. 950). McCord later named Cathy Fleming as the person who had told him. (R. Vol. VIII, p. 954). McCord then named Lesley Crumble, a black male, as the person who had told him. (R. Vol. VIII, p. 964). McCord admitted that he had lied about the identity of the person who had told him. (R. Vol. VIII, p. 969).

Montgomery Police Department officer

A. J. Jones testified that Sims had told him he had information about Bodine about two to three weeks prior to the search of his house. (R. Vol. VIII, p. 973). The State's objection to Sims' questions as to whether rumors in Vice and Narcotics filtered up was sustained. (R. Vol. VIII, pp. 974-975). A. J. Jones said that Sims had asked him if he were being investigated. (R. Vol. VIII, p. 982).

Montgomery Police Department Lieutenant R. C. Martin, the second command of the Vice and Narcotics Bureau, testified that he had received information that Sims was trying to obtain Vice and Narcotics radio codes. (R. Vol. VIII, p. 986). Martin also testified that he had heard that Sims had information to the effect that Bodine was taking protection money. (R. Vol. VIII,

pp. 986-987). Martin stated that he was not pleased to hear that. (R. Vol. VIII, p. 987). Martin said that he could not recall whether he heard that before or after the search of Sims' house. (R. Vol. VIII, p. 987). Martin said that he did not know Julius Moore. (R. Vol. IX, p. 1016). Martin testified that he had previously heard Sims name connected to drug deals. (R. Vol. IX, p. 1024). Martin said that he first heard about Sims having been involved with the subject transaction about twelve or one o'clock on September 29, 1989 when Lay told Bodine and him that a police officer might be involved. (R. Vol. VIII, pp. 990, 999). Martin related that Lay had asked him to check out $700.00 (R. Vol. VIII, p. 990). Martin said that he did not give Lay the money initially because

he was working on accounting books to be sent downtown and had already accounted for the petty cash on paper. (R. Vol. VIII, 995, 1019). He related though that Lay came back and said that he had a sure thing. (R. Vol. VIII, p. 995). Martin said that he gave Lay the money and told him that if it did not go through, they both would be in a lot of trouble. (R. Vol. VIII, p. 991). Martin testified that he said that to Lay because of all of the paperwork would have to be changed. (R. Vol. VIII, p. 995).

Martin said that he put the $200.00 into a safe. (R. Vol.IX, p. 1010). Martin admitted that he himself was the subject of a grand jury investigation. (R. Vol. IX, p. 1031).

Martin also said that a vice officer is not supposed to destroy an original

list of recorded serial numbers made in connection with a controlled buy. (R. Vol. IX, p. 1038).

Former Montgomery Police Department Officer Jerald Richardson testified that he left the Montgomery Police Department for the Leeds Police Department in January of 1989. (R. Vol. IX, pp. 1053-1055). Richardson said that he began with the Montgomery Police Department in November of 1980 and that he worked in the Vice and Narcotics Bureau from April of 1987 to November of 1988. (R. Vol. IX, p. 1058). Richardson testified that his work with the Leeds Police Department took him throughout the state. (R. Vol. IX, p. 1063).

Former Montgomery Police Department officer Bill Wright testified that he was with the Montgomery Police Department

from January of 1978 through March of 1988. (R. Vol. X, p. 1259). Wright said that he had done two stints in the Vice and Narcotics Bureau. (R. Vol. X, p. 1260).

Montgomery Police Department Lieutenant Robert Hankins, an assistant Internal Affairs Officer testified that a September 29, 1989 drug screen test on Sims had been negative. (R. Vol. X, p. 1274). Hankins testified that Martin turned the $200.00 over to him in mid-October of 1989. (R. Vol. X, p.1277). According to Hankins, after he asked Martin for the $200.00, there was no delay in Martin turning the money over to him. (R. Vol. X, p. 1279). Hankins said that the $200.00 had come from the safe. (R. Vol. X, p. 1279).

Leroy Mills testified that about a

year and a half prior to the trial he had bought a Rottweiler puppy from Sims. (R. Vol. X, pp. 1283, 1287). Mills recalled paying between $220.00 and $250.00 for the puppy. (R. Vol. X, p. 1283). Mills recalled seeing another litter of puppies within the previous year. (R. Vol. X, p. 1290).

Brad Sims testified in his own defense. He related that he was twenty-four years old and was a graduate of Jefferson Davis High School. (R. Vol. X, p. 1293). Sims also attended Troy State University where he was a running back on a national championship football team. (R. Vol. X, p. 1294). Sims related that he was married to another Montgomery Police Department Officer and that they had two small children. (R. Vol. X, pp. 1294-1296).

Sims said that he and his wife had never worked in the Vice and Narcotics Bureau and that he had never worked under the supervision of Bodine or Martin but that Martin had been his sergeant at the Montgomery Police Academy. (R. Vol. X, p. 1372). Sims said that he had no difficulties with Martin and that he had no personal difficulties with Bodine. (R. Vol. X, pp. 1372, 1373). Sims acknowledged that Bodine had written a complimentary letter concerning him in January of 1988. (R. Vol. X, p. 1373).

Sims testified that he had participated in drug busts during his career as a police officer and that he had run into drug informants. (R. Vol. X, pp. 1297, 1298). Sims related that a month and a half prior to September of 1989 he had received information that

Bodine was receiving protection money. (R. Vol. X, pp. 1299-1300, 1306). Sims said that he did not tell Montgomery Police Department Chief John Wilson because Wilson and Bodine had been roommate and that he was afraid of Bodine. (R. Vol. X, p. 1302). Sims said that he did relay the information to fellow Montgomery Police Department officers Willie McCord, Frank Brown, and Arthur Jones. (R. Vol. X, pp. 1300, 1301, 1302, 1377-1378). Sims said that after he began circulating that information he had reason to believe he was being followed. (R. Vol. X, 1303). Sims testified that James Jackson, a local car dealer, was the first person to tell him. (R. Vol. X, pp. 1303, 1375). Sims acknowledged that he knew that James Jackson was a convicted felon. (R. Vol.

X, p. 1374). Sims said that just about every day after that he would hold up his hand and make an unfriendly gesture. (R. Vol. X, p. 1306). Sims said that he believed that if Bodine were investigating him, he would tap his telephone. (R. Vol. X. p. 1307). Sims denied calling any drug dealers on the telephone. (R. Vol. X, p. 1307).

Sims related that on September 29, 1989, he had worked the swing shift and was asleep on the couch in his den. (R. Vol. X, pp. 1308, 1309). Sims testified that his wife, who worked second shift patrol, was at work and that Sharon Lampley was there helping him baby-sit. (R. Vol. X, p. 1309).

Sims said that he was awakened by a knock on the door. (R. Vol. X. p. 1310). Sims identified the person at the door as

Eric Johnson who had been Sims friend since junior high school. (R. Vol. X, p. 1310). Sims said that Johnson paid him back money he had loaned him. (R. Vol. X, p. 1310). Sims said that Johnson gave him $400.00. (R. Vol. X, p. 1316). Sims testified that Johnson had told him that the money had come from the sale of a car. (R. Vol. XI, p. 1474). Sims recalled that he had loaned Johnson $400.00 or more. (R. Vol. X, 1311). Sims said that he had loaned Johnson the money because he was a friend in need. (R. Vol. X, p. 1311). Sims testified that both of their cars had been the subject of voluntary repossession actions and that they had no car at the time. (R. Vol. X, pp. 1311-1312). Sims said that they did not have the cars at the time he loaned Johnson the money. (R.

Vol. X, p. 1313). Sims said that he had sold some Rottweiler puppies and had money around the house. (R. Vol. X, p. 1313). Sims said that the last litter was born in July of 1989 and that he had sold them by September of 1989. (R. Vol. X, pp. 1313-1314). Sims related that he worked and that his mother worked an extra job at The Montgomery Advertiser to help him financially. (R. Vol. X, p. 1315). Sims related that his mother would give him $20.00 here and there when she got paid. (R. Vol. X, p.1315, R. Vol. XI, p. 1436). Sims said that he had loaned Eric Johnson about half of what he had. (R. Vol. X, p. 1315). Sims said that after Eric Johnson paid him back he had somewhere in the neighborhood of $800.00. (R. Vol. X, p. 1316). Sims said that he did not give Johnson any

drugs. (R. Vol. X, p. 1316). Sims said that he walked outside to the edge of the patio with Johnson and that he could see someone in the car outside. (R. Vol. X, pp. 1316-1317). Sims said that he did not know who was in the car. (R. Vol. X, p. 1317). Sims related that when Johnson opened the door, he saw two people inside of the car. (R. Vol. X, p. 1317). Sims said he had not seen them before. (R. Vol. X, p. 1317). Sims denied saying anything to Moore about four ounces of cocaine. (R. Vol. X, p. 1318). Sims said he said "hi, how ya'll doing,' and walked back inside. (R. Vol. X, p. 1318). Sims said that after they left, he went back inside, talked with Sharon Lampley for a while, and called his wife at work. (R. Vol. X, p. 1321). Sims said that he and his wife talked about going out and buying

a suit. (R. Vol. X, pp. 1321-1322).

Sims said he kept the money in his bedroom closet. (R. Vol. X, p. 1319). Sims denied having any drugs, drug residue, drug paraphernalia, weights, scales, or plastic sacks in his house. (R. Vol. X, pp. 1319, 1320). Sims also testified that he did not allow people to use drugs in his house. (R. Vol. X, pp. 1320-1321).

Sims said that he got some of the money out of the closet after Johnson left. (R. Vol. XI, p. 1475). Sims said that he then picked up his wife, who was pregnant at the time, and took her to the doctor's office for an appointment. (R. Vol. X, p. 1323). Sims said they were at the doctor's office about 30-45 minutes. (R. Vol. X, p. 1323). Sims said that after leaving the doctor's office, they

started to go home but that his wife said that she was not ready to go home. (R. Vol. X, p. 1324). Sims acknowledged that when he saw the car it crossed his mind that they might be coming to get him. (R. Vol. XI, p. 1481). Sims said they then went downtown. (R. Vol. XI, p. 1324). Sims said that he went into the Looking Good clothing store and that his wife went into a store next door. (R. Vol. X, p. 1324). Sims said that he spent some money in Looking Good. (R. Vol. XI, p. 1477). Sims said that some alterations had to be done on the clothes and that he was told to come back in an hour. (R. Vol. XI, pp. 1479-1480). Sims said that he went back in an hour but that the suit was not ready. (R. Vol. XI, pp. 1480). Sims was crossed examined as to whether he had purchased the suit at

Looking Good that day or a previous day. In the cross examination, Sims was presented with a copy of a sales ticket showing a previous date. However, that sales ticket copy was apparently not connected with Sims and appeared to have been altered in some way. (R. Vol. XI, pp. 1464-1465, 1535-1547). Sims related that when they got home, there were no police cars in front of the house. (R. Vol. X, p. 1325). He said that Bodine pulled in the driveway behind them and that Vice and Narcotics officers came outside and told him to put his hands in the air. (R. Vol. X, p. 1326). Sims related that they patted him down. Upon their request, Sims gave them his car keys and they searched his car. (R. Vol. X, p. 1327). Sims said that he had money on him but that no one searched him at

that time. (R. Vol. X, p. 1329). Sims said that he asked them why they were there, but learned nothing. (R. Vol. X, p. 1329). Sims testified that they did not tell him that any marked money had been found. (R. Vol. X, p. 1330). Sims said that the majority of the money seized from the closet was from the sale of puppies. (R. Vol. XI, p. 1468).

Sims said that the guy from Looking Good delivered the suit to him later that evening. (R. Vol. XI, p. 1464). Sims testified that Bodine transported him to Vice and Narcotics headquarters. (R. Vol. X, p.1336). Sims said that he sat in a chair while Bodine, Martin, and Lay were in an office together. (R. Vol. X, p. 1333). Sims said that Arthur Jones sat on a table beside him. (R. Vol. X, p. 1333). Sims said that he told Simon

that his day was coming because of his conflict with Bodine. (R. Vol. X, p. 1336). Sims said he also did tell Simon that his job performance had gone down. (R. Vol. X, p. 1338). He said that he never told anyone that he was dealing in drugs. (R. Vol. X, pp. 1337, 1340, R. Vol. XI, p. 1550). Sims also denied telling anyone to catch him if they could. (R. Vol. X, p. 1340). He did say that he told Simon that he was in debt and had said that if he had been a big drug dealer he would have had big money and that he may have told Simon that if he were a drug dealer he must be bad at it. (R. Vol. X, pp. 1340, 1341). Sims denied that he was a drug dealer of any kind. (R. Vol. X, p. 1340). Sims said that he told Simon that he had taken his wife to the doctor. (R. Vol. X, p.

1342).

Sims said that Mike Jones and Marty Wooten had given him a ride home. (R. Vol. X, p. 1353). Sims recalled a conversation with them about the investigation and their not being involved in it. (R. Vol. X, p. 1355). Sims did not recall asking Mike Jones and Marty Wooten about a telephone tap and did not recall telling them that he called drug dealers on the telephone. (R. Vol. X, pp. 1355, 1356). Sims also recalled telling Mike Jones and Marty Wooten that he did not sell any drugs. (R. Vol. X, pp. 1355). Sims said that he never told anyone that he was involved in drugs. (R. Vol. X, p. 1355). Sims said that he asked Jones and Wooten about the investigation. (R. Vol. X, p. 1354). Sims related that Bodine proposed that if

he told everything he knew about drugs he might be able to get by with simply resigning from the Montgomery Police Department but that if he did not resign, the case would be presented to the grand jury. (R. Vol. X, pp. 1345, 1347). Sims said that at that time, he had not been quoted as having said anything about Bodine. (R. Vol. X, pp. 1345). Sims also testified that he had been told by Hankins told prior to September 29, 1989 to resign. (R. Vol. XI, p. 1578). Sims said that he did not want to resign because resigning would in his opinion evidence guilt. (R. Vol. X, p. 1347). Sims said he told them that he did not want to resign. (R. Vol. X, p. 1347).

Sims said that he told Bodine he had got the money from a friend. (R. Vol. X, p. 1347). Sims said that he did not give

Bodine a name and that he indicated to Bodine no exact amount of money other than in the hundreds. (R. Vol. X, pp. 1347-1348, R. Vol. XI, p. 1430). Sims said that he did not give Bodine the exact amount because he did not feel like Bodine was being honest with him. (R. Vol. X, pp. 1347-1348). Sims said that he told Bodine about his financial circumstances and that if he were a drug dealer he would not be in a financial bind. (R. Vol. X, pp. 1352, 1353). Sims said that he told Bodine that he had received information that he was being investigated. (R. Vol. X, p. 1350). Sims related that Hankins asked for the names of the officers who told him but that he did not divulge the names because he felt they would be intimidated and fired. (R. Vol. X, p. 1351). Sims

acknowledged that he had not told Bodine the truth. (R. Vol. XI, p. 1434). Sims related that he suspected all but Hankins were involved. (R. Vol. XI, p. 1440). Sims also stated that "[t]alking to Bodine was not like talking to a police officer. It was like talking to a everyday criminal on the street." (R. Vol. XI, p. 1561). Sims related that two days later Chief Wilson told him to give up the names of the officers so that immediate action could be taken against them. (R. Vol. X, p. 1351). Sims said that he did reveal the names to Chief Wilson. (R. Vol. X, p. 1352).

Sims said that he did not give all the details of his information to District Attorney's Investigator Bob Frye because he had not been asked. (R. Vol. X, p. 1380).

Sims said that he was told that the Montgomery Police Department had better not catch him doing any more investigating on anything. (R. Vol. X, p. 1383).

Sims denied telling Simon that Bodine knew he was dealing drugs. (R. Vol. XI, p. 1425). Sims said that he did tell Simon he had financial problems. (R. Vol. XI, p. 1426). Sims did not remember telling Simon he was trying to save $2,000.00 to buy his house. (R. Vol. XI, p. 1426). Sims related that he was actually trying to save $4,500.00 to buy their house. (R. Vol. XI, p. 1428). Sims said that he probably told Simon about the purchase of his Audi automobile. (R. Vol. Xi, p. 1427). Sims also said that he probably told Simon about seeing the white vehicle parked a

few blocks from his house. (R. Vol. XI, p. 1427).

Sims admitted that he told Gantt that Johnson still owed him $200.00. (R. Vol. XI, p. 1482).

Sims said that he did not get his Looking Good receipt back from the police. (R. Vol. XI, p. 1587).

During Sims testimony, the State disclosed for the first time documentary evidence concerning his bank account. The prosecution proceeded to cross examine Appellant Sims' as to various bounced checks. (R. Vol. XI, pp. 1505-1510).

Montgomery Police Officer Cathy Fleming, called in rebuttal by the State, testified that she had not talked with McCord about Sims or Bodine. (R. Vol. XII, p. 1688). She also denied that she

had talked with Sims. (R. Vol. XII, p. 1688).

District Attorney's Office Investigator Robert Frye was asked if he had investigated the allegations made by Sims. (R. Vol. XII, p. 1698). Frye replied that he had and over Appellant's hearsay objection was allowed to state that he was unable to substantiate the allegations. (R. Vol. XII, p. 1699).

James Jackson also denied what Sims had attributed to him. (R. Vol. XIII, p. 1713).

APPENDIX B

Proffered Explanations for Strikes

1. Annie M. Coleman, Black Female, Juror No. 66:

> "She had a larceny second-degree charge according to Criminal Information Justice Center, in 1983; In 1959, she had a fighting and a concealed weapon charge. According to our information from a police officer named Jones the area she lived in, 3657 Oak Street, is well known as a drug area."

(R. Vol V, p. 148)

2. Walter D. Howard, Black Male, Juror No. 10:

> "According to our information when he stood to identify himself, he had a long pause as to where his wife worked and then called the insurance company that he says she now works with by, I believe, the wrong name. Further, he had a criminal conspiracy conviction in 1985, in addition to no driver's license and running red light charges. Two

different officers identified his home, 1656 North Decatur, as being a high drug -- high crime area. He further said in individual voir dire that he had heard about this case and that the defendant was accused of selling out of his apartment. That is incorrect. Therefore, we're not sure he remembered well what he had heard."

(R. Vol. V, p. 148-149).

3. Mary E. Pettus, Black Female, Juror No. 107:

"She likewise lived in a high drug area, the same address as Mr. Howard that we had, 1656 North Decatur. Two officers identified that to us as high drug crime area as well as this attorney knew that. She further had charges of fighting and possessing untaxed whiskey. When questioned by the Court, she had difficulty in individual voir dire, understanding the Court's and prosecutor's questions. She said that she knew something --She raised her hand and said she knew something and was then put with the group to be brought in individually. When the Court brought her in she said she did not know anything. And she said something about -- and it did

not make sense to this attorney -- not calling her name. We were very afraid that she did not understand enough about what was going on to follow the Court's directions and follow what we believe to be lengthy testimony."

(R. Vol. V, pp. 149-151).

4. I.V. Shelby, , Black Female, Juror No. 26:

"Her particular address of 303 West Patton Avenue, a police officer remembered answering a call there. Further it is in a known drug area. According to another officer we show a charge of theft of property in the third degree in 1986 in Montgomery City Court, She further in individual voir dire indicated all she could remember about the case was something about Mr. Sims, the defendant, had come too close to some people. As you know, that was some of the defense that he was set up because of knowledge he had, and that's all she remembered. We were afraid that would tend to cause her to be for the defense. She had a fixed -- at one point she said she did have a fixed opinion that he was innocent and it was only with lengthy

> questioning by the Court that she was able to say that she would -- it was not fixed. She, in fact, interrupted the Court at one point when you were attempting to question her about the case."

(R. Vol. V, pp. 150-152).

5. Phyllis L. Simpson, Black Female, Juror No. 20: "Our information there was at her address on Williams Street, the police had answered a specific call there. Further when asked by the -- the defense questioned whether or not she had received any tickets that she felt was unjust, she said yes, she had." (R. Vol V, p. 152).

6. Johnnie M. Miller, Black Female, Juror No. 81: "Ms. Miller lived on Early Street where the police had answered a call, and this particular neighborhood has been identified as a high crime area, in particular, drugs." (R. Vol V, pp. 152-153).

7. Alfred S. Jones, Black Male, Juror No. 44:

> "According to our record and to my observation, Mr. Jones came into Court wearing jeans, very casually dressed. He stated that -- to the Court's question that he had seen this on TV only one time, and that -- just that it was going on. He was extremely vague. I asked him again what he remembered. He was again vague. And then he divulged that, well, in fact, he saw it not once but twice, including last night, something about a trial. We considered that to be a deception to the Court and prosecution that he did not reveal his full knowledge of this case to the Court. In addition he had a speeding, running a red light, and running a red light charges in 1985, 6, and '88. He's twenty-three years of age as well."

(R. Vol V, pp. 152-154).

8. Hester Webb, Black Female, Juror No. 25:

> "Our information there -- and I personally observed Ms. Webb in Court chewing gum, not only during individual voir dire but

> during the general voir dire she was extremely soft spoken, and it was extremely difficult for me to hear. She was very hesitant in her responses to the question, in particular to a question I asked about what she had heard and what was her opinion about any prior proceeding. My opinion was that she did not want to discuss that, and perhaps had further knowledge that she did not divulge. This case is very complicated and will require close attention and understanding of some very what we think were very subtle differences in the case about whether or not someone's involvement in the case and their involvement in any audit or other activity is relevant."

(R. Vol V, pp. 154-155). 9. Rosa C. Bush, Black Female, Juror No. 19: "Ms. Bush 's attitude appeared to be extremely sad. I was concerned about her desire to be of service. The trial court asked: "She was what?" The prosecutor answered: "Sad. She has a very depressed look about her face. Further, Officer Jones has

identified her home area at Riviera Road as being that of a high crime area, in particular drugs." (R. Vol V, p. 155)

10. John A. Brown, Juror No. 87, White Male:

> "Again, his address was of Clayton Street. He was identified as living in a high crime area by Officer Jones. He stated that he had gone through the sixth grade in education. This will require -- this trial will require the reading -- ... The Case will require the jurors to review documents and determine their validity. We anticipate the defense will again present some blown-up documents, point to things, put numbers in front of them. Also, if my recollection -- and I made a note -- when he stood, I believe he wasn't very aware of the courtroom. He sounded and looked elderly. This case will take several days to try. The jury will be sequestered. We were concerned about his ability to function for that period of time."

(R. Vol V, pp. 155-157)

11. John D. Carter, Juror No. 94,

Black Male:

> "Mr. Carter worked for the ABC Board. This district attorney's office has had a lengthy investigation of the ABC Board. In fact, it resulted in a successful prosecution of at least two people that we're aware of, Mr. Lieberman having been involved in one of those prosecutions personally. Further, the area he lives in of Upton Road, has been identified to us as an extremely high crime area, being a drug area. And lastly, he indicated he was a friend of and had worked extensively in the campaign of Mr. Mark Gilmore. Mr. Gilmore is a friend of mine; however, Mr. Gilmore, based on my personal knowledge, has attempted to speak with our office in asking this office to drop this case and has expressed a personal opinion about this case. I do not know; but I feared that Mr. Carter might be aware of Mr. Gilmore's personal and obviously strong feelings in this case."

(R. Vol. V, pp. 157-158).

12. Sylvene S. Jackson, Juror No. 6, Black Female:

"Ms. Jackson indicated she was a cosmetologist, but did not tell us where she worked. She has a speeding and improper turn, the speeding in '89,the turn in '86. She also was the only other person I observed who wore jeans to Court, extremely casually dressed. Further, her individual comments about what she observed, according to my notes, were to the effect 'I saw it on TV and he's going up against the police department and he was claiming it was a set up.' She said nothing to indicate that he had been arrested or that half of the jury had felt that he was guilty. And her only comments were to the effect that he might not be guilty."

(R. Vol V, pp. 158-159).

13. Samuel Smith, Juror No. 112, Black Male:

"Mr. Smith -- remember the court towards the very end asked the entire jury voir dire about cocaine, whether or not it should be legalized and drugs should not be legalized. He then asked the jurors, does anybody believe that cocaine is habit-forming. Then, a huge number of people raised their

hands. I happened to be observing the front row in particular. I'm very short, and that is the easiest for me to see. And, I noticed Mr. Smith, who was sitting here towards the front, did not raise his hand. Then the Court, realizing it was far too many people to question individually to get their names, said, well, is there anybody who thinks it's not habit forming? He did not raise his hand. He did not participate. I was concerned that he didn't think cocaine was habit-forming since the overwhelming scientific evidence is that it is, and there have been numerous articles about it. Also, I was concerned that he didn't participate in the question. He didn't answer if one way or the other. And lastly, he did not express any knowledge of this case, which surprised me, based on his educational background, his employment and that of his wife."

(R. Vol. V, pp. 159-160).

14. Isralean Chambers, Juror No. 75, Black Female: "Ms. Chambers indicated -- or did not indicate that she had heard anything about the case. She came to court, and the best judgment I can make,

Your Honor, she sat towards the middle rear area. She had glasses on. They appeared to be darkly tinted. I could not tell if it was for medicinal reasons or if it was because she had worn sunglasses in the courtroom. Because of the numerous exhibits and documents, blow-ups, and other things, I could not take a chance on whether or not she had a vision problem, or contrary to most people, wore sunglasses indoors." (R. pp. 160-161).

15. Nancy Moseley, Juror No. 46, White Female:

> "We struck her because she indicated she had heard about the mistrial, and specifically, she said she heard the vote was eleven to one, which was contrary to what the State's information was, although that was publicized. And because she did not -- she obviously thought it was extremely close to a unanimous decision, we were extremely worried that she might be swayed by that. She further said her son had an unfortunate experience with the police department. We did not strike her sooner than that because it was apparent to us, and it was the pattern of the defense, to strike all whites. Every one of their strikes -- all eighteen -- were critical of the white race, and we thought they might strike her. And when it became apparent to us at

about number fifteen they may not, we chose to. rather than risk it, make that strike. Defense then struck a white female."

16. Rose H. Robinson, Juror No. 8, Black Female: "She indicated, when asked, the defense questioned if she had received an unjust ticket. We don't know anymore about her than that, but fearing that she might be prejudiced against the police department, we struck her." (R. Vol. V. pp. 162).

17. Janice Waites, Juror No. 30, Black Female: "Among the reasons there were that she also raised her hand that she had received an unjust ticket. Further, she indicated she knew Mr. --I believe -- DeBardelaben. It was one of the attorneys associated with the defense attorneys." (R. Vol. V, p. 163)

18. James Shaw, Juror No. 93, White

Male:

> "You might recall Mr. Shaw, Your Honor. He was the attorney who actively campaigned in Gorman Houston's campaign. He, too, indicated he had received an unjust ticket, and that was our concern there. However, he was obviously well educated. and we had a long discussion about whether or not having an attorney on the jury would be helpful or hurtful or neutral in this trial. But because of the ticket, we felt we should go ahead and strike him. Likewise, we saved him towards the end in addition because the defense pattern in striking was to strike white males."

(R. Vol. V, pp. 163-164).

Miss Brooks went on saying:

> "We had several others that we had hoped to strike that we did not get to. Our pattern basically, Your Honor, was to get rid of those with criminal histories, in the drug areas, who individually answered things that were confusing to us or of strong concern to us otherwise in individual voir dire. We also based it on the pattern the defense had of striking is they clearly were

striking members of the white race that we felt that those we were concerned about could be held till near the end in the hopes that they would strike some and allow us to strike more people we wanted to get off the jury. We also were trying to protect certain jurors and get them on the jury; in particular, number 16 who is a juror, Ms. Mordean, who is a black female. She is the mother of a police officer that I know, I think is a good officer, and I felt she would make a good juror. Specifically, we were trying to keep on the jury number 51 and did, who indicated she had heard about the marked money. Juror number 52 we wanted to protect. She knew Chief Swindall, former police chief of Montgomery, who is obviously a law enforcement figure, and we felt like she would give the police department a fair shake. Number 54 is an employee of the Montgomery County Commission, and obviously our office is closely associated with the Commission. Number 58 is apparently a physician. He's a radiologist, and we felt his educational background could be helpful to the jury. Number 69 is a black female, who we're not trying to protect her in any sense because we don't know a whole lot about her. We just

simply had no reason to strike her. Number 78, you might recall, was the lady who was from Illinois who had the physical education background, and her husband was likewise a teacher. She seemed to be a forceful person. When she stood and answered, she had a strong voice. In fact, was one of the easiest to understand, in my opinion. Number 79, we weren't particularly trying to protect. I was surprised she wasn't struck by the defense, frankly. Number 88 indicated that she knew some police officers, and we had hoped that would be a positive experience for her. Number 89 was one we had a real discussion about. That's the fire inspector, Judge. You might remember him. First, he said he had no opinion, and then he said, well, he thought he might be not guilty because of some experience with the police department. And he was in our list of probable strikes. We thought about it, but I had known Mr. Deaton professionally now for probably ten years, and I believe him to be the kind of person who will give the State of Alabama, as well as the defendant, a fair shake. And I think that he will weigh carefully the evidence in the case. And when he said he

would do that, I took him at his word since I knew of him personally and professionally. The method in which we struck, Your Honor, was to discuss, this case between Mr. Leiberman and myself, reviewing the information that we had jointly, sharing our opinions. And I hope I have done a good job of articulating his reasons for striking. We had at our disposal, Your Honor, not only the information from -- oh, I would tell the Court, too, that no juror who remains on the jury did we have any information on that he or she had had a call at their home or lived in a high crime area or lived in a drug area, nor did anyone who remains on the jury, to our knowledge, answer positively they had an unfortunate experience or what they thought was an unjust ticket in this case. We had at our disposal criminal histories from not only the district attorney's office but Public Safety, CJIS, district court, city court. We circulated the average sheet to members of our staff, which is some approximately fifty people. We tried to find prior jury service on any of those. We weren't very successful with that. We also circulated it among the narcotics office in the Montgomery Police

Department as a whole for records and other comments about those people. We likewise had the home addresses, the occupation of the juror and the spouse, and age of each of the jurors."

(R. Vol. V, pp. 165-169).

CERTIFICATE OF SERVICE

I, Thomas Martele Goggans, a member of the Bar of the Supreme Court of the United States of America and the attorney for Respondent Brad Haywood Sims, hereby certify that on this 25th day of January, 1992, I did serve the requisite number of copies of the foregoing upon the attorneys for the Petitioner by mailing the same to the attorneys first class postage prepaid and addressed as follows:

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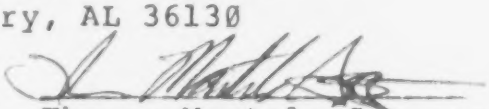

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